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October 21, 2016

Federal Election Commission  
Jeff S. Jordan, Assistant General Counsel  
Office of Complaint Examination  
and Legal Administration  
999 E. Street, NW  
Washington, DC 20463

OFFICE OF GENERAL  
COUNSEL

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**Re: MUR 7131**

Dear Mr. Jordan:

We write as counsel to the Honorable Carol Shea-Porter, Carol Shea-Porter for Congress and Mary Dimodika-Kulju, in her official capacity as treasurer (collectively, "Respondents"), in response to the complaint filed by Brian T. Griset on September 1, 2016 (the "Complaint"). The Complaint fails to set forth sufficient facts, which, if true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), or Federal Election Commission ("FEC" or "Commission") regulations with respect to the Congresswoman. Accordingly, the Commission should find no reason to believe a violation occurred and immediately dismiss the Complaint.

### FACTUAL BACKGROUND

This Complaint is about \$3,000 in radio ads sponsored by a federally registered PAC that had not even given to the Committee. On October 29, 2014, Senior Votes Counts ("SVC"), a nonconnected committee registered with the Commission, reported two independent expenditures for radio advertisements in support of Congresswoman Carol-Shea Porter.<sup>1</sup> SVC reported spending a combined \$3,000 to two different outlets on the advertisements; it could have contributed at least \$2,600 to Respondents had it wished to do so.<sup>2</sup> The Complaint alleges that Respondents coordinated the ad with SVC. *See* Compl. at 8. However, the Complaint presents no facts that would support any of the "conduct" elements of coordination. *See* 11 C.F.R. § 109.21(d)(1)-(5) (2014).

Instead, the Complaint relies entirely on inference and speculation. First, the Complaint claims that the ad must have been coordinated because an employee of Representative Shea-Porter, Susan Mayer, contributed to SVC before it made the independent expenditures. The public record shows that Susan Mayer did make a contribution to ActBlue on October 29, 2014,

<sup>1</sup> Senior Votes Counts, 24 Hour Report of Independent Expenditure (filed Dec. 2, 2014).

<sup>2</sup> *Id.*

earmarking the funds for SVC.<sup>3</sup> With no evidence besides the fact of the contribution itself, the Complaint claims that she made this contribution “for the specific purpose of purchasing radio advertising supporting her...employer...” Compl. at 7. Second, the Complaint claims that the ad must have been coordinated because an SVC co-founder, performing artist Jon Bauman, appeared at a campaign event for Representative Shea-Porter. As an exhibit, the Complaint includes a picture of Representative Shea-Porter and Mr. Bauman that purportedly included Ms. Mayer. Again, however, the Complaint alleges no communication between Respondents and Mr. Bauman that would have met any of the “conduct” elements of section 109.21(d). Even if the ad had been coordinated, the result would have been a contribution \$400 over the limit from a federally permissible source.

### LEGAL ANALYSIS

Under Commission rules, a public communication must satisfy a three-prong test to be a coordinated communication.<sup>4</sup> First, it must be paid for by a person other than candidate, authorized committee or political party committee with which it is coordinated.<sup>5</sup> Second, it must satisfy one or more “content” standards.<sup>6</sup> Third, it must satisfy one of several “conduct” standards.<sup>7</sup> “The third prong of the coordination test, the conduct standard, requires analysis of *affirmative acts* taken by the parties who are alleged to have engaged in the coordinated activity. The conduct standard may be satisfied by affirmative acts that fall into any one of six general categories: request or suggestion; material involvement; substantial discussion; common vendor; former employee or independent contractor; and dissemination, distribution, or republication of campaign material.”<sup>8</sup>

The Complaint presents no facts to allege that any of these elements were met.<sup>9</sup> According to the Complaint, SVC had a “relationship” with the Congresswoman “since at least 2012.” Compl. at 8. SVC endorsed Congresswoman Shea-Porter on October 3, 2014, at an event both she and Jon Bauman attended. See Compl. at 9. On October 27, Congresswoman Shea-Porter and Jon Bauman were again both “present in Manchester for the [congressional] debate,” and were photographed together at the event. Compl. at 11. And on October 29, Susan Mayer contributed \$3,110 to SVC through ActBlue. See Compl. at 4.

<sup>3</sup> Senior Votes Counts, FEC Post-General 2014 Report, at 6 (filed Dec. 4, 2014).

<sup>4</sup> 11 C.F.R. § 109.21.

<sup>5</sup> 11 C.F.R. § 109.21(a)(1).

<sup>6</sup> *Id.* § 109.21(c).

<sup>7</sup> See 11 C.F.R. § 109.21(d).

<sup>8</sup> Factual and Legal Analysis, Matter Under Review 6059 (Sean Parnell for Congress), at 5 (citing 11 C.F.R. § 109.21 (d)(1)-(6)) (emphasis added).

<sup>9</sup> Because of the 24-hour report filed by SVC with the Commission, this response assumes *arguendo* that section 109.21(c)’s “content” prong was met. However, the Complaint includes no transcript or copy of the ad, nor does it include any summary of its content.

Yet the Commission has consistently found similar allegations insufficient to meet the “conduct” standard. For example, in Matter Under Review 5870 (Mollohan), the Commission found that facts alleging a “long-standing relationship” between relevant parties did not satisfy the conduct prong because the complaint lacked any facts to support the claim that the parties had actually discussed the ad in question.<sup>10</sup> On a number of other occasions, the Commission has rebuffed claims of alleged coordination based on parties appearing together at political events prior to the advertisement in question being disseminated.<sup>11</sup>

The Complaint surmises that the timing of Mr. Bauman’s appearance with Representative Shea-Porter and Ms. Mayer’s contribution to SVC renders it “beyond credibility” that Respondents did not coordinate the ad. Compl. at 10, 17. The Commission, however, requires a stronger showing than that to sustain a charge of coordination. For example, in Matter Under Review 5754 (MoveOn.org Voter Fund) the Commission found no reason to believe a violation had occurred because the complaint failed to connect any conversation between the parties to the advertisements in question, and thus, failed to provide “probative information of coordination.”<sup>12</sup> Similarly, in Matter Under Review 6059 (Sean Parnell for Congress), the complaint “assumed that [relevant parties] had discussed...campaign plans, projects, activities, and needs, positions on issues, poll results, and other information concerning [the] campaign,” but presented no evidence that such conversations took place.<sup>13</sup> In that matter, a mere inference of coordination was not enough to establish the conduct standard.<sup>14</sup>

Respondents respectfully submit that the ad—in fact—was not coordinated. They do not deny that Representative Shea-Porter appeared with Mr. Bauman, nor that Ms. Mayer volunteered on the campaign, nor that Ms. Mayer gave to SVC. But they know of no request, suggestion, assent or material non-public information that was communicated to SVC on their behalf. And they had sparse reason to coordinate with SVC in any case, because the PAC could have lawfully given the same amount it spent, save for \$400.

## CONCLUSION

We respectfully request the Commission to dismiss the Complaint in MUR 7131 and we appreciate the Commission’s consideration of this response.

<sup>10</sup> Factual and Legal Analysis, Matter Under Review 5870 (Mollohan).

<sup>11</sup> See, e.g., General Counsel Report, Matter Under Review 6405 (Friends of John McCain), at 7; Matter Under Review 6059, *supra* note 8; Factual and Legal Analysis, Matter Under Review 5754 (MoveOn.org Voter Fund), at 3-4. The “event” from the complaint was a “house party” hosted by MoveOn.org Voter Fund, which Senator Kerry’s wife attended in person, and Senator Kerry joined by phone conference.

<sup>12</sup> Matter Under Review 5754, *supra* note 11; see also Factual and Legal Analysis, Matter Under Review 5999 (Freedom’s Watch), at 6 (rejecting a complaint based on alleged coordination for failure to provide “probative information of coordination.”).

<sup>13</sup> Matter Under Review 6059, *supra* note 8.

<sup>14</sup> *Id.*; see also Matter Under Review 5754, *supra* note 11; Factual and Legal Analysis, Matter Under Review 5750 (Laffey for U.S. Senate), at 6.

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Very truly yours,

A handwritten signature in black ink, appearing to read "B. G. Svoboda", with a long horizontal flourish extending to the right.

Brian G. Svoboda  
Courtney Weisman  
Counsel to Congresswoman Shea-Porter